

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

TASER INTERNATIONAL, INC., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No.: 1:10-cv-3108-JEC
	)	
v.	)	[On removal from the State
	)	Court of Fulton County,
	)	Georgia Case No.:
MORGAN STANLEY & CO., INC., <i>et al.</i> ,	)	2008-EV-004739-B]
	)	
Defendants.	)	
	)	

**NOTICE OF FILING**

Pursuant to Federal Rule of Civil Procedure 45(b), Plaintiffs hereby give notice that a subpoena to testify at a deposition has been served on THE DEPOSITORY TRUST & CLEARING CORPORATION. Counsel for the Depository Trust & Clearing Corporation has agreed to accept service. A true and correct copy of the subpoena is attached hereto as Exhibit A.

Respectfully submitted this 17th day of February, 2011.

/s/ Michael A. Caplan

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a true and correct copy of the foregoing **NOTICE OF FILING** was electronically filed with the Clerk of Court using the Court's electronic filing system which will automatically send an email notification of such filing to the following attorneys of record who are registered participants in the Court's electronic notice and filing system:

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Further, I hereby certify that on this day, I served a true and correct copy of the foregoing via United States mail as follows:

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This 17th day of February, 2011.

/s/ Michael A. Caplan

Michael A. Caplan  
Georgia Bar No. 601039

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AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

## UNITED STATES DISTRICT COURT

for the  
Southern District of New York

TASER INTERNATIONAL, INC., et al

*Plaintiff*

v.

MORGAN STANLEY &amp; CO., INC., et al

*Defendant*

Civil Action No. 1:10-cv-03108-JEC

(If the action is pending in another district, state where:

Northern District of Georgia

SUBPOENA TO TESTIFY AT A DEPOSITION  
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTIONTo: The Depository Trust & Clearing Corp.  
55 Water Street, 22nd Floor, New York, NY, 10041

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

The subject matters are identified in Exhibit A, attached hereto.

Place: Simon & Partners LLP, The French Building 551 Fifth Avenue, New York, NY 10176	Date and Time: 03/15/2011 09:30
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The deposition will be recorded by this method: Stenographer and Videographer

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/17/2011

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's Signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party)

Plaintiff TASER International, Inc., et al

, who issues or requests this subpoena, are:

Michael A. Caplan  
Bondurant, Mixson & Elmore LLP  
Suite 3900, 1201 W. Peachtree St, Atlanta, GA 30324

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.****(1) Producing Documents or Electronically Stored Information.**

These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



## **EXHIBIT A**

### **INSTRUCTIONS AND DEFINITIONS**

1. The relevant time frame for the topics set forth below is January 1, 2003 to May 31, 2009.
2. “You” or “you” refers to the parent corporation Depository Trust & Clearing Corporation (“DTCC”) and its subsidiaries, the Depository Trust Company (“DTC”), National Securities Clearing Corporation (“NSCC”), OMGEO LLC (“OMGEO”), and all other subsidiaries and divisions (both foreign and domestic) of the DTCC
3. The term “Participant” or “Participants” refers to all entities both foreign and domestic including, but not limited to, NSCC members and participants, DTCC members and participants, broker-dealers, market makers, banks, correspondent banks, custodians, hedge funds, funds of funds, trusts, trust company service providers, clearing firms and non-clearing firms (referred to as Commission Bill firms, specialists and \$2 brokers that trade on the New York Stock Exchange, American Stock Exchange, or other exchanges, but are not NSCC members), all of which held/or transferred, or transacted any stock positions in the security during the time period.

### **TOPICS**

1. The documents or data that you maintain reflecting the daily closing positions or balances in TASER Securities for each DTCC member participant holding positions of TASER Securities, including but not limited to the NSCC, DTCC, DTC Institutional Delivery, OMGEO, lending and borrowing of TASER Securities between participants and the stock-borrow program.
2. Your policies, procedures and practices for retaining documents reflecting the daily closing positions or balances in TASER Securities for each DTCC member participant holding positions of TASER Securities, including but not limited to the NSCC, DTCC, DTC Institutional Delivery, OMGEO, lending and borrowing of TASER Securities between participants and the stock-borrow program.

3. Your policies, procedures and practices for identifying any instances in which there is a “failure to deliver” or “failure to receive” and informing a market participant of such “failure to deliver” or “failure to receive.”
4. The documents or data that you maintain regarding the execution or clearing of transactions in securities that are cleared outside of the Continuous Net Settlement System, including, but not limited to, the OMGEO (ID Net) system.
5. Your policies, procedures and practices for retaining documents reflecting the execution or clearing of transactions in securities that are cleared outside of the Continuous Net Settlement System, including, but not limited to, the OMGEO (ID Net) system.
6. The discrepancies in the data produced by the DTCC to Plaintiffs on September 10, 2010, and October 29, 2010, including how the total shares on deposit at the DTCC exceeded the total shares issued by TASER. For example, the DTCC Daily Security Position Report for February 24, 2006 shows that the total TASER shares on deposit on February 24, 2006, were 58,614,892 shares. The data produced by the DTCC on September 10, 2010, shows that the total TASER shares on deposit on February 24, 2006, was 60,698,751 shares. And the data produced by the DTCC on October 29, 2010, shows that the total TASER shares on deposit on February 24, 2006, was 111,413,286 shares.